

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-SEVENTH REGION

DILLON COMPANIES, INC.,
d/b/a KING SOOPERS,

Employer,

and

Cases 27-RM-650, 651, 652, 653, 654, 655,
656, 657, 658, 659, 660, and 661
27-UC-200

PAPER, ALLIED INDUSTRIAL, CHEMICAL AND ENERGY
WORKERS INTERNATIONAL UNION (PACE) LOCAL 5-920,

Union.

**DECISION AND ORDER CLARIFYING UNIT
AND DISMISSAL OF REPRESENTATION PETITIONS**

Upon representation petitions filed by Dillon Companies, Inc, d/b/a King Soopers (Employer) in Cases 27-RM-650-661, and upon a unit clarification petition filed by Paper, Allied Industrial, Chemical and Energy Workers International Union, Local 5-920, (PACE or the Union) in Case 27-UC-200, all of which were duly filed under Section 9(b) of the National Labor Relations Act, as amended, (Act), a hearing was held before Hearing Officer Barbara E. Blanton-Greene. Pursuant to the provisions of Section 3(b) of the Act, the National Labor Relations Board (Board) has delegated its authority in this proceeding to the Undersigned.

Upon the entire record in this proceeding, the Undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error, and they are hereby affirmed.

2. The Employer is a Colorado corporation engaged in the retail sale of groceries and other related items at various facilities in the State of Colorado. During the 12 months preceding the hearing, the Employer purchased and received at its various Colorado facilities, goods and materials valued in excess of \$5,000, which were shipped directly from points and places outside the State of Colorado. In addition, during the 12 months preceding the hearing, the Employer derived gross revenues in excess of \$500,000. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purpose of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that PACE International Union, Local 5-920, is a labor organization within the meaning of the Act.

4. By filing 12 petitions in the instant matters, the Employer seeks elections at individual facilities to determine the representation status of certain pharmacists working in pharmacies located within the Employer's Colorado facilities opened since September 1998.¹ The Employer contends that the

¹ The case filing numbers, store numbers, locations, and opening dates involved in this proceeding are as follows: Case 27-RM-650 involves Store #82 (Golden) which opened January 20, 1999; Case 27-RM-651 involves Store #75 (Parker) which opened October 7, 1998; Case 27-RM-652 involves Store #74 (Loveland) which opened December 8, 1999; Case 27-RM-653 involves Store #84 (Aurora) which opened July 28, 1999; Case 27-RM-654 involves Store #76 (Colorado Springs) which opened July 14, 1999; Case 27-RM-655 involves Store #77 (Colorado Springs) which opened February 10, 1999; Case 27-RM-656 involves Store #81 (Brighton) which opened April 19, 2000; Case 27-RM-657 involves Store #73 (Fort Collins) which opened September 30, 1998; Case 27-RM-658 involves Store #78 (Littleton) which opened March 29, 2000; Case 27-RM-659 involves Store #80 (Longmont) which opened October 21, 1998; Case 27-RM-660 involves Store #89 (Broomfield) which opened August 11, 1999; and Case 27-RM-661 involves Store #88 (Parker) which opened June 21, 2000.

pharmacists in each facility constitute an appropriate single store unit and that the accretion of said employees into the bargaining unit in its collective bargaining agreement (Agreement) with the Union would be inappropriate.

By filing the unit clarification petition at hand, the Union seeks to clarify the existing bargaining unit in the current Agreement² to include pharmacists employed in pharmacy departments in the Employer's stores opened since September 1, 1998. In accordance with the following discussion, I find that the proposed clarification is warranted.

The Employer's operation is comprised of approximately 84 retail grocery stores, which are divided into seven separate geographic districts. The Employer's stores are located from Pueblo in the south to Ft. Collins in the north along the front range in the State of Colorado. Each store is comprised of various departments, including a pharmacy department.

The evidence establishes that in 1974 the Employer had 23 stores containing a pharmacy department. During that year, Oil, Chemical, and Atomic Workers International Union, Local 2-920 (OCAW)³ organized those 23 stores, and that labor organization was ultimately certified as the collective bargaining

² That Agreement was originally set to run from January 27, 1997 through February 3, 2001. On March 29, 1999, the parties extended the contract to January 25, 2003. Inasmuch as there is no evidence or contention that the Union abandoned its position concerning pharmacists in the newly opened pharmacies in exchange for contract concessions when the contract was extended, I find the unit clarification petition to be properly filed. *St. Francis Hospital*, 282 NLRB 950 (1987). The bargaining unit in the Agreement includes the following employees:

All full-time, regular part-time, and intern pharmacists hired with five years of education required to become pharmacists, employed by the Employer within the State of Colorado; excluding all office and store clericals, all confidential secretaries and supervisors, as defined in the Act, and all other employees.

³ In 1999, OCAW merged with another union and became PACE -- the Union involved in this matter.

representative in the unit set forth above.⁴ From 1974 until September 1, 1998, the Employer opened an additional 48 stores at various locations throughout Colorado. Each of these new stores also contained a pharmacy department. As each store opened, employees covered by the Agreement were afforded the opportunity to bid into positions in the new store, and, thereafter, the Employer recognized the OCAW as the bargaining representative of the pharmacists in the new store. The record is silent as to whether the Union always demonstrated majority status prior to such recognition. The representation clause and unit description negotiated and agreed to by the parties in 1974 continued, unchanged and unchallenged, through 24 years of successive agreements.

In September 1998, the Employer was preparing to open several new stores, each of which contained a pharmacy department. During a meeting between the Union and the Employer to discuss other matters, the Union raised the issue of the new stores and asked the Employer when the bid sheets would be posted.⁵ On approximately September 28, 1998, the Employer informed the Union that it would neither recognize the Union as the bargaining representative in the new stores, nor would it apply the Agreement to them. Thereafter, the Union filed a grievance alleging that the Employer's action was a breach of the Agreement. I take administrative notice that on January 8, 1999, the Union filed

⁴ I take administrative notice that Certification of Representative was issued from this Office on January 31, 1974 in Case 27-RC-4681.

⁵ Posting of bid sheets for employee positions, as set forth in the Agreement, had always been the event that notified the Union that a new store was ready to be opened and staffed as per the Agreement.

an unfair labor practice charge in Case 27-CA-16207-1, and on January 29, 1999, the Union filed an amended charge, alleging the Employer's failure to apply the Agreement to newly opened stores as a unilateral change in violation of the Act.⁶

The record in the instant matter further discloses that in June 1999, the parties arbitrated the issue of whether the Agreement covered the newly opened stores identified in the unfair labor practice proceeding. The Arbitrator ruled that the recognition clause in the Agreement provided a basis for finding that the Union was the bargaining representative for pharmacists in both the Employer's newly opened stores and in all prospective stores that might be opened by in Colorado by the Employer. Despite its prior agreement to be bound by the Arbitrator's ruling, the Employer refused to comply with the decision and filed the instant petitions in Cases 27-RM-650-661. Thereafter, the Union filed its unit clarification petition in Case 27-UC-200.

As stated above, the Employer operates approximately 84 stores divided between 7 distinct geographic districts. The number of stores in each district is based upon factors other than mathematical parity and each district includes both Union stores and petitioned-for stores. Each district is managed by a district

⁶ The Sixth Order Consolidating Cases, Amended Consolidated Complaint, Order Severing Cases and Notice of Hearing, which involved numerous case filings, an additional labor organization, and two individual charging parties and which was issued by the Undersigned on March 4, 1999, in part, alleged that the Employer had violated Sections 8(a)(1) and (5) of the Act by failing to recognize the Union and by failing to apply the terms and conditions of the Agreement at pharmacies in newly opened stores in Ft. Collins, Golden, Parker, and Longmont. The record reflects that the Union subsequently withdrew Case 27-CA-16207-1 on April 6, 1999. The uncontroverted evidence presented by the Union in the hearing at hand is that this withdrawal was prompted by the Employer's agreement to submit the matter to arbitration and to be bound by the decision of an arbitrator.

manager, who is responsible for overseeing the operation of the stores within his/her district. The District Managers report directly to the Employer's Vice-President of Operations.

Each store within a particular district has a store manager, who is responsible for ensuring that the Employer's operational and district wide policies are followed. This includes overseeing the day-to-day operation of all the departments within his/her particular store, including the pharmacy department. Store managers delegate certain responsibilities with regard to the pharmacies to pharmacy department managers. Although most of the Employer's personnel policies and other practices are set at levels above the store manager, the store manager has independent authority to terminate any employee in his/her store, including pharmacists. On occasion, the store manager confers with the District Manager or the Employer's labor relations department before electing to terminate an employee.

The Employer's labor relations department is available to handle employment matters that are not resolved at store level. While the record is silent with respect to all the functions of this department, it is clear that the functions of the labor relations department are equally available to both the Union stores and the petitioned-for stores.

In addition to the management structure set forth above, the Employer also employs a Director of Pharmacy. The individual currently occupying that position is Ken Chao. Mr. Chao's duties⁷ include advertising, marketing and

⁷ Mr. Chao, who has occupied this position since September 1999, testified that his duties and responsibilities were identical to those of his predecessor.

implementing programs for all the Employer's pharmacies in Colorado. He is also involved in legislative affairs as they relate to the pharmacy operations.

Maria Gallay, Manager of Pharmacy Services, reports directly to Mr. Chao. Ms. Gallay is responsible for managing the Pharmacy Support Services Department, which provides administrative, legal, and marketing services to all the Employer's pharmacy departments. Ms. Gallay also has responsibility for setting the appropriate prices on pharmacy products sold in the Employer's stores. In addition, Ms. Gallay, or one of several Pharmacy Service Department specialists who report to her, is responsible for interviewing and hiring all pharmacists, irrespective of whether the applicants are applying for work in a Union store or in a petitioned-for store.

The Employer's hiring requirements for pharmacists are identical in Union stores and in petitioned-for stores. Newly hired pharmacists can select their work location from a list of openings maintained by the Pharmacy Services Department.⁸ The list of open positions is not divided based upon whether the store is a Union store or one of the petitioned-for stores.

The pharmacy manager, store manager, and district manager jointly determine the number of pharmacists needed at each store. Their decision is based on guidelines prepared by the Pharmacy Services Department. Generally, the volume of prescriptions processed by any given pharmacy department determines the number of pharmacist employees who will work at that location.

⁸ In the petitioned-for stores, the store manager can refuse to accept a particular applicant. In Union stores, openings in the stores are filled through a bidding process, which is based upon seniority, and the store manager does not have the authority to refuse the most senior applicant.

In addition to the State-mandated requirements and standards for pharmacists, the Employer maintains a Pharmacy Operations Manual, which sets certain additional standards for all the Employer's pharmacies. These policies are the same for the Union stores and for the petitioned-for stores. The Pharmacy Services Department is currently working on a special project to identify "best practices" for all the Employer's pharmacies. These practices will be used in all pharmacy departments.

Ms. Gallay also has responsibility for hiring pharmacists who work on a casual or on-call basis. These casual pharmacists generally have other primary employment and are not required to work any specific minimum number of hours per week.⁹ The Employer currently maintains two lists of casual employees,¹⁰ one for Union stores and one for the petitioned-for stores. Casual pharmacists are generally assigned to a particular store for purposes of logging into the Employer's central computer system and for receiving memos or other information from the Employer. Casuals work in any Union store or petitioned-for store when necessary. However, there is nothing to prohibit a casual pharmacist whose name appears on the Union store list from working in a store on the petitioned-for store list, and this, in fact, occurs. The rules and qualifications for employment as a casual pharmacist are the same regardless of whether the

⁹ Casual or on call pharmacists employees work less than 20 hours per week. Regular part time pharmacist employees work in excess of 20 hours per week.

¹⁰ There are approximately 10 casual pharmacists working in the petitioned-for stores and approximately 30 working in Union stores.

work is done in a Union store or in a petitioned-for store. Casual pharmacists are paid an hourly rate, which is the average of the wages paid to bargaining unit pharmacists under the Agreement. Casual or on call pharmacists receive no fringe benefits.

The record also establishes that when a pharmacy department needs temporary assistance to ensure adequate staffing of a particular shift, full time or regular part time pharmacists from other locations may also be utilized. Such temporary transfers of full time and regular part time employees or “floaters” are made without regard to whether their base store is a Union store or one of the petitioned-for stores. The primary concern of the Employer in such situations is that qualified pharmacists adequately staff the pharmacy department in need of assistance.¹¹ Pharmacy managers are responsible for scheduling the full time and regular part time “floaters” to all stores.

Evidence presented at the hearing reflects that over the timeframe from September 1, 1998, when the Employer began operating the first newly-opened pharmacy on a nonunion basis, until the time of the hearing, there have been approximately 180 instances of temporary interchange involving pharmacists covered by the Agreement working in the petitioned-for stores and vice versa. This temporary interchange has occurred on a weekly basis.

Janine Roeding is the Employer's Manager of Managed Care. She also reports directly to Mr. Chao. Ms. Roeding is responsible for negotiating third

¹¹ On at least one occasion, a pharmacy manager from a petitioned-for store worked as a pharmacist at a Union store to ensure that the pharmacy department in the Union store was adequately staffed.

party billing agreements with vendors, and she oversees the centralized ordering of supplies for all the Employer's pharmacy locations. Although there is a centralized pharmacy supply source, individual pharmacies exchange various supplies when necessary. This exchange of supplies is done without regard to whether the pharmacy department is in a Union store or a petitioned-for store.

As noted above, each pharmacy department operated by the Employer is licensed by the State of Colorado as a prescription drug outlet. As required by State law, each pharmacy department has a pharmacy manager.¹² Pharmacy managers are responsible for ensuring that the pharmacy departments are operated in a manner consistent with State law and the Employer's guidelines. The role of the pharmacy manager is the same in both the Union stores and the petitioned-for stores. That role generally includes overseeing the daily operations of the department to make certain that work flows smoothly. He/she also schedules employees to ensure adequate staffing of the department. The pharmacy manager also attempts to resolve any customer complaints that may arise. These various duties encompass only a portion of the pharmacy manager's workday, and, at both Union stores and petitioned-for stores, the majority of the pharmacy manager's workday is spent preparing and dispensing prescriptions like other pharmacists. The pharmacy manager reports directly to the store manager. On a district wide level, pharmacy managers attend scheduled meetings with their district manager during which they discuss new

¹² Pharmacy managers have historically been excluded from coverage by the collective bargaining agreements negotiated by the parties, and neither the Union nor the Employer seeks to change that arrangement through the filing of the unit clarification and RM petitions in this matter.

technology and other programs. The participants at these meetings also discuss various legal, operational and procedural issues that impact all the pharmacies in their district.

In addition to a pharmacy manager, each pharmacy department has a staff of two or more pharmacists who are assigned to a particular store on a permanent basis.¹³ All pharmacists enter their work hours and other work related data on the Employer's centralized computer system using personal access codes. The access codes, which can be used at any of the Employer's pharmacy locations, also allow pharmacists access to information regarding patients, doctors, interaction of drugs, and other information necessary for them to perform their day-to-day job duties.

The duties and responsibilities for all pharmacists employed by the Employer are primarily set by State Law and are the same regardless of whether the pharmacist works in a Union or petitioned-for store. Similarly, the record evidence presented by the parties establishes that the wages, benefits, and working conditions, and all other terms and conditions of employment for pharmacists are generally the same regardless of whether they work in a Union store or in one of the petitioned-for stores.¹⁴ Training of pharmacists is

¹³ At the time of hearing, there were 27 full-time, regular part-time, and intern pharmacists working in the 12 petitioned-for store locations.

¹⁴ Although the record testimony indicates that the benefits were identical for Union store and for the petitioned-for store employees, the transcript from the arbitration hearing reflects that the pharmacists at these two categories of stores receive different pension benefits.

Also, even though, technically, there is no seniority system for pharmacists working in the petitioned for stores, all pharmacy employees retain their initial start date with the Employer

accomplished within the first two weeks of employment and generally involves familiarizing the pharmacist with the Employer's operation. This training is the same throughout the Employer's operation and no additional training is required when a pharmacist transfers to another location.

When openings occur, pharmacists are able to transfer from one store to another and some have transferred to a number of stores during the years they have worked for the Employer. With respect to the current pharmacists working at the petitioned-for stores, 12 out of 27 current pharmacists transferred from stores covered by the Agreement. Pharmacists who have taken advantage of the Employer's transfer policy to move from Union stores to petitioned-for stores or vice versa, testified that all facets of their employment remained the same after their transfers. The process of effecting such a transfer involves making a written request to do so. If an opening exists in the desired pharmacy department, the pharmacist seeking the transfer is generally transferred without any further action on his/her part.¹⁵

In the day-to-day performance of their jobs, the pharmacists in various stores contact pharmacists in other stores on a frequent basis. These contacts generally involve obtaining patient information regarding prescriptions, information regarding medications, and questions concerning inventory supplies.

regardless of how often they transfer from one location to another. This date is used to award vacation time and other benefits in the same manner a seniority system generally operates.

¹⁵ In non-Union stores this process is not technically considered "bidding" on the position, but the process utilized to apply is basically the same as the bidding process used under the collective bargaining agreement.

Although the contacts are generally by telephone, they can require meeting in person to deliver or pick up supplies. This interaction between pharmacists occurs without regard to whether a particular location is a Union store or one of the petitioned-for stores.

ANALYSIS AND CONCLUSION

The Board has defined an accretion as the "addition of a relatively small group of employees to an existing unit where these additional employees share a sufficient community of interest with the unit employees and have no separate identity." *Safety Carrier, Inc.*, 306 NLRB 960, 969 (1992); *Progressive Service Die Co.*, 323 NLRB 183, 186 (1997). The Board has long maintained a restrictive policy on accretions because accreting employees into an existing unit does not provide employees with the Board's traditional safeguards of the right of employees to determine their own bargaining representative. *ATS Acquisition Corp.*, 321 NLRB 712 (1996). Accordingly, the Board will find an accretion only when the additional employees have little or no separate group identity and, thus, cannot be considered to be a separate unit and must be part of the existing unit. *Robbins-Purle, Inc.* 184 NLRB 709 (1971). In *Hershey Foods Corp.*, 208 NLRB 452, 458 (1974) enfd. 506 F. 2d 1052 (3rd Cir. 1974), the Board restated this principal by noting that "{l}t is well settled that the doctrine of accretion will not be applied where the employee group sought to be added to an established bargaining unit is so composed it may separately constitute an appropriate bargaining unit." This doctrine has been consistently applied through the

intervening years. See, e.g., *Pan American Grain Co., Inc.*, 317 NLRB 442, 447 (1992); *Dennison Mfg. Co.*, 296 NLRB 1034, 1036 (1989); *Compact Video Services*, 284 NLRB 117, 1997 (1987); *Towne Ford Sales*, 270 NLRB 311 (1984); *Safeway Stores, Inc.*, 256 NLRB 918 (1981). Indeed, the Board, will not, "under the guise of accretion, compel a group of employees who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election." *Melbet Jewelry Co.*, 180 NLRB 107, 110 (1969).

In making my determination in the instant matter, I am mindful of the Board's long settled principle that there is nothing in the Act that requires the unit sought to be the only appropriate unit, or even the most appropriate unit. Rather, the Act requires only that the unit be "appropriate." *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950). I have also considered the settled principle that a single facility is presumptively appropriate unless it has been so merged into a comprehensive unit that it has lost its separate identity and thus the presumption has been rebutted. *New Britain Transportation Co.*, 330 NLRB No. 57 (1999); *J&L Plate, Inc.*, 310 NLRB 429 (1993). Moreover, this principle has been found specifically applicable to retail stores. *Haag Drug Co.*, 169 NLRB 877 (1968); *Renzetti's Market*, 238 NLRB 174 (1978).

To determine whether the presumption against unit clarification has been rebutted, the Board reviews various "community of interest" factors such as the integration of operations, centralization of management and administrative control; geographic proximity of the entities; similarity of working conditions,

common control of labor relations, collective-bargaining history, and interchange of employees. *GHR Energy Corp.*, 294 NLRB 1011, 1051 (1989) (quoting *Gould, Inc.*, 263 NLRB 442, 445 (1982); *Passavant Retirement & Health Center*, 313 NLRB 1216, 1218 (1994); *Safety Carrier, Inc.*, *supra*; *Ryder Integrated Logistics, Inc.*, 329 NLRB No.89 (1999). Although no one factor is dispositive in unit clarification proceedings, the Board does accord greater weight to some factors than to others. Indeed, the presence or absence of a particular factor may be critical, and, at times, the nature of the particular industry involved causes one factor to be given greater or lesser weight. *Great A & P Tea Co.*, 140 NLRB 1011 (1963); *Renzetti's Market*, *supra*; *Angeli's Super Valu*, 197 NLRB 85 (1972).

1. Bargaining History

As noted above, the parties' collective bargaining history dates back to 1974 when the Board certified the Union as the collective bargaining representative in the following unit:

All full time and regular part-time and intern pharmacists hired with five years of education required to become pharmacists, employed by the employer within the State of Colorado.

Since 1974, the Union and Employer have been parties to a series of Agreements which have determined the terms and conditions of employment for the Employer's pharmacists. When the parties negotiated the first Agreement 1974, the Employer operated 23 stores containing pharmacy departments. By September 1998, that number had increased to 71 stores, all of which were located in the State of Colorado. During the period from 1974 to 1998, the same recognition language and bargaining unit description that was included in the

original Agreement was applied, without incident or re-negotiation, to the pharmacists in 48 new stores. This application of the language in the 1974 Agreement resulted in a bargaining unit that grew to nearly 300 employees.

Thus, it is undisputed that in 1974, pursuant to a Board election, the Union was certified as the exclusive representative of the employees in an appropriate unit. Moreover, the Board has long considered bargaining history as one of a number of factors to consider in a unit clarification matter. *Ryder Integrated Logistics, Inc.*, supra; *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962). I conclude that the evidence regarding the parties' bargaining history set forth above, is supportive of finding that the unit clarification sought by the Union is warranted.

2. Common Supervision

The Board has recognized that it is common in the operation of retail chain stores for there to be a considerable degree of centralized administration. Therefore, such a circumstance is generally not considered a primary factor in determining whether accretion is appropriate in that industry unless it can be shown that the day-to-day problems and concerns among the employees at one location are shared by employees who are separately supervised at another location. *Renzetti's Market*, supra. I conclude, based upon the record as a whole, that such a showing has been made in this matter.

As noted above, State law requires each pharmacy department to be overseen by a pharmacy manager. While that individual has general responsibility for overseeing the operation of the pharmacy department, the

pharmacy manager's involvement in employees' terms and conditions of employment is minimal. Thus, a majority of the pharmacy manager's time is spent performing the same tasks as that of other pharmacists in the pharmacy department. The pharmacy manager has no involvement in hiring or firing pharmacists and there is no evidence that any pharmacy manager has any authority to discipline or evaluate pharmacists' job performance. In addition, the pharmacy manager is not involved in setting pharmacists' pay rates or benefits. In Union stores these terms and conditions of employment are generally determined by the Agreement. The record establishes that pharmacists in the disputed stores received the same wages, benefits and other terms and conditions of employment as those set forth in the parties' Agreement.

Thus, in all stores, the Director of Pharmacy or his staff is solely responsible for hiring pharmacists. To the extent that qualifications and/or training for pharmacy department employees are not mandated by State law, they are set by the Employer's labor relations department and/or the Pharmacy Services Department. While the pharmacy manager or store manager is involved in overseeing the pharmacy departments in their particular store, the amount of oversight appears to be limited in scope and type. In that regard, while the pharmacy manager prepares schedules for the pharmacists in his/her department, this scheduling appears to be routine in nature. In addition, while the pharmacy manager may be involved in minor disputes¹⁶ among employees and/or customers, the Pharmacy Services Department and the Employer's labor relations department appear to handle most personnel matters.

In addition, the store manager's role in supervising the pharmacy department is less than significant. While the store manager has the authority to terminate a pharmacist, even that responsibility may be shared and/or deferred to either the district manager or the Employer's labor relations department. The most significant aspects of all pharmacists' terms and conditions of employment - hiring, initial rates of pay, hours of work, evaluations, wage increases, benefits and discipline are done on a centralized basis by persons other than the pharmacy department managers or the store managers. From these facts, I conclude that common supervision is effectively centralized for all pharmacy departments at a level above each individual store. Thus, common supervisors and managers address pharmacists' day-to day problems and concerns in both Union stores and the petitioned-for stores. Such effective common supervision warrants the inclusion of the pharmacists in the petitioned-for stores into the existing bargaining unit.

3. Interchange or Transfer of Employees

The Board has found accretion inappropriate where there is an absence or infrequency of interchange between the unit employees and the petitioned-for employees. *Combustion Engineering*, 195 NLRB 909, 912 (1972; *Dennison Mfg. Co.*, 296 NLRB 1034 (1989). Indeed, the absence of interchange of employees is one factor commonly relied upon by the Board to find no accretion. *Combustion Engineering*, supra.

In the instant matter, the record reflects a frequent and steady interchange of among the Employer's various locations involving both casual/on call

¹⁶ The record is generally silent with respect to the nature of such disputes.

pharmacists and full time/regular part time pharmacists or “floaters.”¹⁷ This interchange can be permanent or temporary, and it occurs between all of the Employer's locations irrespective of whether they are Union stores or petitioned-for stores. Although there may be many pharmacists who spend their entire career working in only one of the Employer's stores, the record establishes that there are also a substantial number of pharmacists who transfer freely among pharmacy departments.

Thus, the record establishes that a number of pharmacists requested, and were granted, permanent transfers from a Union store to one of the petitioned-for stores as those stores opened.

In addition, the record establishes that there is a significant amount of temporary interchange of pharmacists among Union stores and the petitioned-for stores. These temporary transfers, which are normally accomplished with casual or “floater” pharmacists, occur when there are unforeseen shortages of pharmacists in a given pharmacy department or to cover scheduled absences

¹⁷ As noted above, the record shows approximately 180 instances of interchange from January 1, 1999 through June 24, 2000. Given the small number of full-time and regular-part employees involved in these proceedings, I find this to be a significant number. Moreover, that number, presumably, would have been far higher if there had been 12 stores throughout the approximately 18 months under consideration. As noted above, stores were opened throughout the entire time under consideration. Thus, in the early months under review, only a few stores were open and fewer opportunities for interchange existed. Moreover, as reflected in the transcript of the arbitration proceeding which was entered into the record in the proceeding herein, following the decision of the Employer in September 1998 that it would not agree to apply the existing Agreement to employees in new stores being opened, the Employer instructed management that they were not to “co-mingle the groups” and that pharmacists from newly-opened stores were to work in Union stores only in the event of a “dire, dire emergency.” But for those instructions, presumably, the number of temporary transfers would have been higher.

due to scheduled vacations, illness, etc. These temporary transfers are generally sought by the Employer in order to ensure that its pharmacy departments are sufficiently staffed.

I reject the Employer's contention that these various forms of interchange and transfers must be disregarded as a basis for finding an accretion simply because employees are not compelled to transfer.¹⁸ The interchange among employees, whether voluntary or not, is a significant factor in finding that an accretion is warranted. Indeed, it is the Employer who has structured its operation to allow for such transfers to occur in order to ensure adequate staffing of its pharmacy departments as part of the Employer's normal operation. The fact that the pharmacists are willing to participate on a voluntary basis is not a basis for concluding that such transfers and interchange should be disregarded. Moreover, it is implausible that the Employer would not mandate such temporary transfers, in the absence of employees volunteering to transfer. I find the amount of permanent and temporary transfers in the instant matter to be significant. Thus, the one factor most commonly relied on by the Board to warrant finding an accretion is present in the instant matter. *Penn Traffic Co.*, 291 NLRB 189, 190-191 (1975); *Peter Kiewit Sons Co.*, 231 NLRB 76, 78 (1977).

4. Integration of Operations

The record establishes that there is a sufficient degree of integration of operations to warrant an accretion of the petitioned-for stores into the existing

¹⁸ *New Britain Transportation Co.*, supra, cited by the Employer, is not dispositive, because a majority of the temporary employees transfers in that matter resulted from the employer's need to staff charter or special events. The temporary staffing needs of the Employer at hand result from the Employer's normal day-to-day operation.

bargaining unit. In that regard, each pharmacy department operated by the Employer is connected to a centralized computer system and every pharmacist interacts daily with this system. This interaction is required for a variety of reasons related to the pharmacists performing the duties required by the Employer. Further, as discussed above, pharmacists in one pharmacy department are in frequent contact with other pharmacy departments to discuss matters related to their duties as pharmacists.

The record further establishes that uniform operational policies and goals are set by the Employer's Pharmacy Services Department and labor relations department. These operational policies and goals are imparted to the pharmacy managers at regularly scheduled district meetings to ensure that all the stores and districts operate in a similar manner. While I have considered the fact that each pharmacy department generally has some degree of autonomy in its day-to-day operations, I have concluded that the integration and intermingling of the pharmacists in the Employer's pharmacy departments is sufficient to warrant an accretion.

The Employer states that the interaction and interchange among the Employer's pharmacy departments should be disregarded because the Employer's pharmacists also interact with pharmacies outside the Employer's system. I find this argument unpersuasive. The mere fact that the petitioned-for employees have some interaction with a totally separate employer's employees does not negate the factors that warrant finding an accretion in the instant matter.

5. Geographic Proximity

Whether measured by street miles, or "as the crow flies", it is clear from the record that many of the Employer's stores are located in very close geographic proximity to one another. Because of the much larger number of Union stores as compared with the number of petitioned-for stores, one could assume that typically a petitioned-for store is closer to one or more Union stores than to another petitioned-for store. To some degree, it is this geographic proximity that facilitates the transfer and interchange of employees as well as the integration of operations. Thus, the geographic proximity of the Employer's stores, while not dispositive of the issue of when an accretion is appropriate, supports a finding that an accretion in this matter is warranted.

6. Similarity of Wages, Fringe Benefits and Working Conditions.

All eligible pharmacists, regardless of whether they work in a Union store or a petitioned-for store received identical wages, and benefits.¹⁹ The wages and benefits for all pharmacists are those set forth in the parties' Agreement. The working conditions of all pharmacists are also the same, so much so, that when a pharmacist from one pharmacy department transfers to another, no additional training or other instructions is required. Thus, all pharmacists work similar length schedules, have the same breaks, vacations, holidays, and so forth. Regardless of which store they work in, all pharmacy department employees are entitled to use the employees' breakroom and/or other facilities at a particular store.

¹⁹ As set forth above, certain on-call employees work less than the minimum number of hours to be eligible for fringe benefits.

7. Summary

Where accretion is urged, as here, the Board must carefully consider the Section 7 rights of the employees involved. In an initial representation proceeding involving multi-locations, the employees at the various locations have an opportunity to participate fully in the representation process. Employees at a new separate location that has been accreted into a system wide unit are denied that opportunity. Thus, before ordering an accretion it must be shown that the group to be accreted has little or no separate group identity and that they do not constitute a separate appropriate unit. Based upon the record in this matter and the above discussion, I have concluded that the petitioned-for employees do not have a sufficient separate identity to form separate appropriate units.²⁰

Therefore, I find that the petitioned-for employees are accretions to, and should be included in, the bargaining unit currently represented by the Union. In view of this finding, I find that no question concerning the representation of the petitioned-for employees exists, and I shall dismiss the 12 petitions in Cases 27-RM-650-661.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth

²⁰ Because the individual store pharmacies do not constitute separate appropriate units, the Employer's reliance on *Joseph Magnin Company, Inc.*, 257 NLRB 656 (1981), and *Houston Division of Kroger Co.*, 219 NLRB 388 (1975), is misplaced.

Street, NW, Washington, DC 20570. In order to be timely filed, the Board in Washington by must receive this request by September 6, 2000. .

Dated at Denver, Colorado, this 23rd day of August 2000.

B. Allan Benson
Regional Director
National Labor Relations Board
Region 27
700 North Tower, Dominion Plaza
600 Seventeenth Street
Denver, Colorado 80202-5433

420 0100 0150
420 1200 1201
420 4000 4008
420 4600 4617
420 5000 5034